

**Real Estate Conveyancing in 5 European Union Member States:
A Comparative Study**

SHORT PRELIMINARY REPORT

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The European Commission, Directorate General for Competition, has raised the question of whether the role of public notaries in real estate conveyancing leads to the imposition of costs that are not reasonably justified by the work required or by other

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legitimate public policies of the respective Member States.¹ This independent comparative study of real estate conveyancing law, practices and costs in 5 Member States of the European Union has been conducted to assist the European Commission in its consideration of this issue. The Member States included in the study are Estonia, France, Germany, Sweden and the United Kingdom.² Two states of the United States are included as a control and perspective external to the EU.

Executive Summary

Modern real estate conveyancing involves a number of complex and interrelated activities to meet the needs and requirements of diverse economic and regulatory interests involved in the ownership, transfer and financing of residential real estate. In all of the European jurisdictions studied the function of effecting transfer of legal title has become relatively straightforward and routine thanks to efficient systems of title registration. Complexity is lent to real estate transactions by the many legal, financial and regulatory considerations that surround and attend the transfer and the financing of the purchase. Most of the work of conveyancers deals with these considerations rather than the now relatively simple task of passing title to the property from seller to buyer.

The variety of these considerations external to the pure conveyance among the jurisdictions under study makes it very difficult to compare the cost and efficiency of conveyancing institutions or professionals. Consumer protective legislation, incidence of taxation, public and communal rights and interests all impose complexity on real estate transactions and are all different among the countries under study. Varying provisions of national substantive law (other than regulations of the conveyancing function) also affect the nature and degree of performance required of conveyancers.

¹ Public notaries as legal officers and practitioners in most civil law systems are sometimes referred to as "latin notaries" or "civil law notaries" in order to contrast them from Anglo-American "notaries public". The latter are not necessarily legally trained and have very limited functions, generally the taking of oaths and acknowledgments and other minor civil tasks. Anglo-American notaries public do not play any significant role in the transfer of real estate. In this report the term "notary" or "public notary" without other modifier refers exclusively to the civil law or "latin" public notary.

² For purposes of land law and conveyancing practices, the United Kingdom is divided into three sub-jurisdictions, England and Wales, Scotland and Northern Ireland. This study was restricted to law, practices and costs in England and Wales, in which occur the great bulk of land transactions in the United Kingdom. Later references in this report to United Kingdom or Great Britain should be understood to refer

Finally, and likely of greatest significance, requirements of financing banks, and the market for real estate financing itself, seem to vary among the countries under study, thus imposing different burdens on conveyancing professionals and their clients. It is thus very difficult to compare conveyancing efficiency or cost on an "apples to apples" basis.

It is also very difficult to find appropriate proxies to make economic comparisons of conveyancing systems or institutions on an international basis. Attempts to gauge relative efficiency or quality of conveyancing services or systems based, for instance, on the comparative number or amount of post-transaction disputes, or the professional liability insurance premiums paid or claims sustained by conveyancing professionals are of very dubious validity. There are simply too many other variables, such as local substantive and procedural law, other professional exposures, and claims-friendliness of local legal cultures that affect these purported proxies to permit any reasonable correlation with quality or efficiency of conveyancing services.

It is also evident that conveyancing costs represent a relatively insignificant element of costs attendant on the transfer of real estate. In all of the jurisdictions under study real estate brokers' commissions dwarf conveyancing professionals' fees. In most jurisdictions real estate transfer taxes contribute more to overall transaction cost than do fees of lawyers or notaries.

Within the range of transactions studied, fees of conveyancing professionals to advise transaction participants, to create necessary documentation, and to effect change in registration of ownership range from 0.30% to 1.65% of the value of the transaction, depending on the amount of the transaction, whether a purchase money mortgage is involved, and the jurisdiction in question. In Sweden, conveyancing costs are lumped with brokerage costs and are compensated by a broker's commission. This does not mean that these services are free or are rendered at low cost. In fact, it appears that the role of brokers in conveyancing enables Swedish brokers to collect full sales commissions in a large number of transactions in which brokerage services are not needed. In the United States the absence of registered title systems and the

burgeoning of a secondary market for mortgages have led to the development of the title insurance industry, which has tended to impose higher costs on conveyancing participants.

There is no reasonable correlation between the kind or degree of regulation of conveyancing professionals and conveyancing costs among the jurisdictions under study. There are far too many other variables among jurisdictions to make a meaningful comparison based on any particular feature or degree of professional regulation. To the extent that any correlation is visible, it appears that costs for smaller and average value transactions tend to be lower in jurisdictions which maintain stricter regulation of the conveyancing profession.

Conveyancing fees and other transaction costs based on the value of the transaction tend to favor the many average low value transactions at the expense of relatively few high value ones. This approach tends to promote access to justice and make high quality conveyancing services available to lower-income consumers at reasonable cost. The structure of brokerage commissions, taxes, and professional fees in some jurisdictions have this effect. However there is no indication in any case that any such cross subsidy unreasonably burdens or distorts the market in either high or low value property.

No comparison of costs can be complete without considering the quality of the services rendered. For most purchasers and many sellers of residential real estate, the purchase of a home is one of the most important legal transactions of their lives. While many aspects of residential real estate purchases and sales are routine, the variety of individual circumstances, the complexity of government and financial institution requirements, and the importance of the transaction to the individual strongly suggest the importance of good legal advice to the key transaction participants, above all, the buyer, and strict regularity in implementation of the transfer. The notarial systems of Estonia, France, and Germany provide independent impartial legal advice to all transaction participants by highly qualified professionals who are subject to stringent standards of oversight, financial responsibility, and specialized expertise. These

systems also promise a high degree of regularity in real estate transactions in general.

In England each transaction participant can obtain independent legal advice from his or her own lawyer. Sometimes buyers' lawyers also represent financing banks, which may affect their independence as far as buyer-bank issues are concerned. Recently, licensed conveyancers are also authorized to effectuate transfers. The quality of legal advice from such sources is hard to gauge.

In Sweden it appears that buyers do not have practical access to independent legal advice unless they take the unusual step of consulting a lawyer outside the transaction. The conflicting obligations of real estate brokers and their structural allegiance to sellers do not make them good sources of independent legal advice to buyers. Concern about the quality of conveyancing services continues to be manifested despite recent efforts at reforms in licensing and training of brokers. Although the Swedish system appears to function in the context of Swedish culture, one can question whether it can be extended abroad.

In the United States buyers in Maine do not generally obtain their own legal advice, but are served by title companies or lawyers whose loyalty is to the financing institutions which instruct them. In New York participation by buyers' lawyers is more frequent, but at additional cost. Significant monies are channeled to lawyers for financing entities through required title insurance on which they receive generous commissions.

Analysis of the costs of real estate conveyancing services in the various systems under study produces a mixed picture. No one country is the lowest or highest cost for all of the various hypothetical transactions posited. Estonia and Germany clearly offer consumers at the lower end of the value spectrum high quality conveyancing services at the lowest absolute cost of the various countries studied. Conveyancers in the United States and England tended to be more economical for higher-value transactions and impose a somewhat greater cost on the lower value purchases and sales.

There is no apparent relationship between the kind and degree of regulation of conveyancing professionals and the cost of conveyancing services. All conveyancing

systems are legally regulated. More highly regulated notarial jurisdictions such as Germany and Estonia appear to have the lowest costs for transactions of low and average value. Less regulated systems such as the U.S. and the United Kingdom may have lower costs for higher value transactions.

All of the countries under study offered consumers a degree of choice in conveyancing professional to handle their transaction. A purchaser of property in Estonia, France and Germany is free to select a notary of his choice to document the transaction. In Sweden, the seller's broker usually prepares the agreements and documents the purchase. In England, each party is free to choose his own solicitor, although if the transaction is financed, the buyer's solicitor may also have to be acceptable to the financing bank. In the U.S. the parties are theoretically free to choose their own counsel, but in practice contract drafting is often performed by brokers and closings are managed by title companies or lawyers representing financing banks.

All of the EU Member States under study are in the process of converting their land registry systems to electronic data base format in order to permit electronic inquiry, electronic transmittal of land transfer documents and ultimately, direct access to the database to effectuate land transfers and re-registrations. Germany, France and Estonia have made good progress toward an all-electronic land register system, with the prospect of electronic effectuations of land transfers within sight in the future. The systems in England and Sweden permit electronic inquiries, but further progress toward electronic transfers and re-registrations depends on finding an effective way to make sure that the system will not be degraded by errors and inconsistencies on the part of the various conveyancers who would like to have access to the system. The patchwork of state systems and local recording facilities within the United States has retarded the development of both land registration and electronic conveyancing to date. Future development in the direction of all-electronic conveyancing with direct electronic access to land registry data-bases seems more promising in the notarial jurisdictions, where compact highly trained cadres of conveyancing practitioners are likely to be able to maintain the quality control function now performed by public officials.

There is no evidence that conveyancing costs are affecting the market for real estate in any of the Member States under study. Each Member State's conveyancing system reasonably reflects its national public policies and priorities and appears to respond to the requirements of transaction participants and financing entities. There is no evidence that the diversity of such systems impedes cross-border investment in European real estate. Rather this diversity may be permitting intra-EU experimentation that will foster ongoing developments and reforms to the benefit of all EU Member States.

Methodology of Study

The study is based on more or less traditional comparative law methodology. An effort has been made to identify the political, social and economic function of the legal institutions under study and the public and private interests and values involved. National reports describing the real estate conveyancing system of each of the countries in the study have been prepared by professional organizations in the case of Estonia, France and Germany and by research assistants in the case of the other jurisdictions studied. Each of the national reports is based on common outline designed to elicit the information keyed to the functions, interests and values identified. This information has been supplemented by the Reporter's own investigations, which have included visits and interviews in the various jurisdictions and actual experience with and witnessing of real estate transactions.³

Eight more or less typical real estate transactions have been hypothesized for comparison purposes. The hypothetical transactions are purchases and sales of residential real estate of moderate value. High value residential and commercial real estate transactions have not been compared. This is because of the much greater frequency of transactions of lower and average value property and because the focus of this study is the impact of conveyancing costs on ordinary consumers, who tend to buy

³ The National Reports are appended in full to this study's Final Report dated May 28, 2007. Space in this Short Report does suffice to permit acknowledgements of the many contributions to this study by national reporters, colleagues in various countries, and by research assistants from different jurisdictions without whose help and assistance this study would have not been possible. These contributions are acknowledged with greater specificity in the Final Report.

and sell property at the lower end of the value scale. Various costs incident to these hypothetical transactions have been identified and estimated for each of the jurisdictions in the study.

The identified costs have then been plotted, compared and analyzed using Quantrix modeling software. The descriptive and quantitative data is briefly discussed on a country-by-country and comparative basis. This summary report ends with a brief summary of the key conclusions of the study.⁴ Tables of the direct costs associated with the hypothetical transactions in the jurisdictions studied are appended.⁵

Making a comparative study of the cost of professional assistance in the effectuation of real estate transfers among several legal systems is seriously complicated by several factors. A sovereign may, as a matter of public policy, require specific measures accompanying the transfer of real estate to protect consumer parties or to implement other public policies. Compliance with these requirements can significantly affect the work required of the conveyancing professionals who attend to the transaction.

The same is true of the requirements of third-party financing entities. To the extent that these entities require special assurances of the primacy of their secured position or special documentation as a result of conditions in the marketplace for such financial services, a real cost is imposed on the transfer to accommodate their interests.

The cost of effectuating real estate transfers is directly impacted by the kind of system for registration of title or recordation of title instruments offered by the respective public authorities. Primitive systems tend to impose costs on the users. More sophisticated systems may provide quicker and more certain effectuation of title transfers, but may require a higher level of expertise on the part of the conveyancing professional.

⁴ A more complete version of the conclusions can be found in the complete and condensed versions of this report.

⁵ This is a condensed version of the final Report of this study, which also contains discussion of the conveyancing process in theory, analysis of the difficulties in comparing conveyancing systems and practices, detailed descriptions of the conveyancing process in each of the jurisdictions included, detailed analysis of the cost information, and national reports for each country. Reference is made to the complete Report for detailed information supporting the conclusions herein set forth.

Finally, the transfer of real estate and the activities of professionals involved with the transfer frequently include the provision of professional services in addition to the mere effectuation of the transfer of title to the real estate. The most important of these is the provision of legal advice to one or more of the participants in the transaction. Other such services include the handling of escrow funds and matching payment to performance. Frequently the professionals handling the transfer of title are also required to collect and remit transfer taxes in behalf of the state. In some cases the professionals handling real estate transfers are expected to maintain records of the transaction over extended periods of time and have such records accessible in the event some future question about the transaction arises.

The nature and extent of these additional services varies from jurisdiction to jurisdiction. It is hard to dismiss any of them as unnecessary or trivial. For instance, systems which provide one or both parties to real estate transfers with independent legal advice about potential issues that may arise may well enjoy a higher level of confidence and satisfaction on the part of those parties which receive the advice, if not a lower rate of future litigation and dispute. Making any kind of economic assessment of the value of these services on an objective basis is impossible.

Country-by-Country Comparative Analysis

Considering the salient policy criteria identified above, one can venture some comparative evaluation of the real estate conveyancing systems and the roles of real estate conveyancing professionals of the EU Member States and the states of the United States under study.

Estonia

Estonia's new system appears to provide a high degree of quality and security in real estate transfers at reasonable cost. The implementation of a nationwide electronic land registration system has facilitated access to land ownership information and promoted certainty of land ownership. The function of the Estonian notary appears to be similar to that of the notary in both France and Germany, as a neutral quasi-official

legal resource to document and effectuate transfers of real estate as well as other specified juridic acts.

Although brokers play a role in slightly more than half of sales and purchases of residential real estate in Estonia, it is of significance that neither buyer nor seller can be bound to buy or sell real estate by any document other than a notarial contract. This guarantees that the parties will both have access to and receive impartial legal advice concerning the risks and responsibilities of the transaction they are planning to enter into before they are legally committed.

Notaries in Estonia have also made good use of data processing technology to make their operations more efficient and to speed the completion of transactions. Further improvements are to be anticipated. There is has been a lag between submission and re-registration during which a fraudulent seller could enter into a second sales contract, but as of the writing of this summary report, the new E-notary system has eliminated any gap by automatically entering a caution in the land register at the time a transfer document is electronically submitted for registration. Estonian notaries anticipate no difficulty in transitioning to a completely electronic system under which notaries will have direct access to an electronic land register in order to effectuate instantaneous changes in title and registration of encumbrances.

Real estate transfer costs for the 8 hypothetical transactions in Estonia are set forth in Table C. Costs of the Estonian notarial system appear to be very moderate. For smaller transactions the Estonian system produces the lowest costs of any system under study. This is significant, because of the large number of lower-cost transactions and the importance of insuring that citizens of less means have access to high-quality legal services in effectuating transactions of great importance to them and the national economy. For larger transactions the Estonian system is less costly than France and Germany, but slightly more expensive than Sweden, the United Kingdom and the US.

France

In France the level of service provided by notaries using France's nationwide and

partly electronic land registration system is very high. Such services as effectuating more or less instantaneous notation of mortgage interests and disbursing funds to pay all interested parties at the time of final contract signing tend to facilitate real estate transfers and reduce costs and delays as experienced by the parties.

The French notarial system also provides the parties with independent legal advice from a neutral legal officer at the time they are actually bound to make the transfer. Although some preliminary contracts are prepared by brokers, such contracts are limited, as a practical matter, to affecting the earnest money deposited with the broker, not the ultimate ownership of the property.

The French notarial system also permits the participation of more than one notary if either party or even a financing bank so desires. Participation of more than one notary is more common in transactions of larger value than the ordinary sale of a small house or apartment. This option enhances the freedom of choice that the parties enjoy in the selection of neutral officers to document their transactions and permits a party to secure the participation of a notary in which it has particular trust and confidence based on past experience. Under the current schedule of fees, participation of additional notaries does not increase the total costs paid by seller and buyer.

Table C sets forth real estate transfer costs for 8 hypothetical transactions in France. Costs for notarial conveyancing services in France seem to be comparable to New York and England for smaller transactions and somewhat higher for larger transactions. The relationship of French notarial fees to all costs attending real estate transfers in France appears to be moderate at 7-13% of total transfer costs for all transactions.

Germany

German conveyancing practices provide a high level of security and certainty through use of a preliminary notation on the title register which provides positive protection against intervening interests pending completion of the transaction and actual change in registered ownership. German parties also have access to high quality

independent and impartial advice concerning real estate transactions and their consequences, and professional implementation of all stages of the transaction.

Table C sets forth transfer costs for the 8 hypothetical transactions included in the study. Overall costs and professional conveyancing costs for transferring real estate, with or without financing, appear to be moderate. For smaller transactions, German professional conveyancing costs are lower than all other countries under study except for Estonia. This is significant because the number of transactions of small and average value homes and condominiums is considerably larger than the number of higher value transactions and the German fee structure gives purchasers and sellers of lower and average value properties access to legal services of the same high quality as are available to the buyers and sellers of property of greater value. For larger transactions, conveyancing costs in England and the United States appear to be slightly lower, and costs in Germany and Estonia are almost identical.

Sweden

The almost total absence of participation by jurists in land conveyancing in Sweden leads to apparent economies in conveyancing costs. Documentation and effectuation of real estate conveyances in Sweden are performed by the brokers who offer the property for sale and are compensated by a single commission for both services. Efficiency in real estate transactions is fostered by a modern nation-wide title registration system with electronic access for authorized persons, including real estate brokers.

Table C summarizes real estate transfer costs, converted to Euro equivalents, for the eight hypothetical transactions in Sweden. Does this mean that conveyancing services are “free” in Sweden? Definitely not. The work of conveyancing must be done by someone. The brokerage industry appears to be willing to perform the conveyancing function at a cost of subjecting transactions that do not require brokerage services to the payment of brokerage commissions.

While it is difficult to break out the portion of the Swedish broker’s commission

that represents compensation for conveyancing services, one notes that Swedish parties employ brokers for virtually all real estate transactions. It seems scarcely conceivable that virtually all Swedish buyers and sellers need brokers to get them together on a sale and purchase. The experience of the EU Member States and the American States under study suggests that under ordinary economic conditions, parties will make use of brokers in about 50-70% of transactions. Multiplying the percentage of Swedish transactions that are brokered in excess of this base percentage by the 3% standard brokers commission in Sweden indicates that Swedish buyers and sellers collectively are paying something approaching 1% of total transaction value to brokers real estate transaction services other than traditional brokerage.⁶

The quality of advice available to buyers and sellers in Sweden is somewhat unclear. Although recent years have seen efforts to increase professionalism and public accountability of the real estate brokerage profession, the role of a real estate broker is somewhat difficult to reconcile with that of a provider of independent legal advice to transaction participants. Brokers are oriented to making a sale. Their compensation is totally dependent on the sale happening. They are selected and retained by sellers, and have a special responsibility to insure that their sellers get the best price for their properties. If a buyer wishes independent advice from a legal professional in a real estate transaction, he must consult and pay a lawyer, which is apparently not customary in Sweden. There is a perception in Sweden that the quality of broker performance is not all that it should be and continued proposals for reforms.

The Swedish system appears to function under the particular economic and social conditions of Sweden. Whether it should be considered a model for other modern political economies might be subject to question.

⁶ For lack of any other reasonable proxy for the cost of conveyancing services in Sweden, this study uses an amount equal to 0.9% of the value of the property transferred. This estimate is derived by subtracting a conservative estimate of the percentage of transactions brokered in other EU Member States (65%) from the percentage of transactions brokered in Sweden (95%) and multiplying the difference (30%) by the average brokerage commission (3%).

United Kingdom

The United Kingdom has made progress toward simplifying real estate conveyancing and reducing costs by the final implementation of a universal land registration system. Title examination costs of the kind that are still prevalent in the United States have largely disappeared in England and Wales. Ease of reference to the registry system helps English conveyancers to accommodate chains of conveyances each conditioned upon the other. At the same time, there is a high rate of failure of transactions and a low public appreciation of the efficiency of the real estate transfer system. Further improvements are hoped for with potential future developments in the direction of electronic implementation of applications for re-registration or mortgage notation.

Table C sets forth transaction costs with respect to the 8 hypothetical transactions in England and Wales. Parties in the United Kingdom generally obtain independent legal advice through their own solicitors. This results in relatively high costs for transactions of low or average value. In fact, for the purchase of a lot or small dwelling for 100,000€ the total conveyancing fees in the UK were the highest of the 6 jurisdictions studied. On the other hand, the apparent high percentage of conveyancing fees to overall transfer costs with respect to the smallest transactions is due to the absence of a transfer tax for transactions of less than £125,000.

By the same token, conveyancing fees are relatively flat as transaction size increases. For the largest transactions, UK conveyancing fees are among the lowest among the jurisdictions considered.

United States

Costs for real estate conveyancing in the United States appear to be unnecessarily increased by the absence of a modern title registration system and the widespread use of title insurance as a substitute. Although parties to real estate transactions have the ability to obtain legal advice from their own lawyers, most real estate transactions take place without participation of lawyers for the buyer or seller.

What legal advice is available comes from title companies and lawyers acting for financing banks or mortgage intermediaries.

Table C sets forth transfer costs for each of the 8 hypothetical transactions in both Maine and New York (upstate). Considering the likely lack of high quality legal advice for all participants, conveyancing costs seem relatively high. For a purchase of a lot of land for 100,000 € conveyancing costs (including title insurance) in New York are second only to the UK and France. Maine seems somewhat more reasonable with costs somewhere in the middle between the UK, New York and France on the one hand, and Germany, Estonia and Sweden on the other. As is the case with the United Kingdom, conveyancing costs are relatively flat in comparison with jurisdictions where costs are computed as a percentage of transaction value.

A serious limitation of the American model is the proportion of conveyancing costs which go to the lawyer for the bank or mortgage company, either directly or in the provision of mortgagee and owner title insurance. Of the transaction parties, the bank or mortgage company is the least likely to require transaction specific advice. That the bank lawyer gets most of the professional conveyancing compensation appears to reflect conditions in the mortgage market rather than a considered allocation of legal advice and costs therefore.

In terms of quality of advice all of the European jurisdictions under comparison, with the possible exception of Sweden, provide better institutional access to advice for transaction participants than appears to be the case in New York or Maine. Moreover, the title registration systems in all of the EU Member States under study spare their purchasers of real estate the cost of title insurance, which burdens purchasers in the United States, which have not seen fit to upgrade their own real estate title systems.

The Relationship of Regulation of Conveyancing Professionals to Real Estate Conveyancing Costs.

Based on the information collected from the five European Union Member States included in this study it is impossible to relate conveyancing costs to the degree or type

of regulation of conveyancing professionals in any of the EU countries under study. Costs do not appear to behave in any way that can be correlated with kind or degree of regulation of conveyancer. In many instances, notarial jurisdictions, which tend to have the most stringent level of conveyancer regulation, turn out to have the lowest costs. In the only jurisdiction which permits real estate brokers to handle conveyances, it appears that brokers have used their conveyancing function to garner brokerage commission income in virtually all sales transactions, a proportion that is much higher than the share brokers are able to capture in the other jurisdictions under study. In the US the absence of strong rate regulation permits lawyers to maintain title companies which receive title insurance commissions on the order of 80% of the premiums paid by buyers and mortgagors, who are required by the secondary mortgage marketplace to purchase the insurance.

By basing notarial fees on transaction value, Estonia, France and Germany, make it possible for the many consumers with small and average value transactions to have access to the same high quality of legal services as do those with larger amounts at stake at a more affordable price.

It also appears that the degree of regulation maintained in Estonia, France and Germany provides a stronger guarantee that transaction participants will actually partake of impartial and independent professional advice and guidance in completing transactions which might be the most important legal matter of their lives and that such transactions will be completed in a responsible and orderly manner.

Buyers and sellers in those lands where regulation is less stringent appear to get less access to independent advice in comparison to banks and financial institutions, which use their economic clout to influence how the transaction is closed. Thus, in the less regulated climate of Maine and New York banks receive good advice and representation by their lawyers and title companies compared with buyers and sellers, who frequently go without independent advice or representation. In Sweden the quality and independence of advice that buyers can expect from their sellers' real estate brokers is seriously open to question. Even in England, buyers often share counsel with

their banks. Moreover, the large percentage of real estate purchase and sale transactions which "fall through" between initial agreement and exchange of contracts suggests that the interval before the parties are both bound by exchange of contracts remains unacceptably long and subjects the parties to hazard.

Reduced regulation of conveyancing professionals in Sweden and England appears to be accompanied by a relatively high rate of errors in effectuating real estate re-registrations. Although no statistical comparison has been made, reports of significant numbers of errors in registry filings in both Sweden and England can be contrasted with an almost total absence of reported errors in Germany, France and Estonia.

Effective regulation of conveyancing professionals may gain in importance as efforts are made to transition to totally electronic land registration systems permitting transfers and re-registrations to be made by conveyancing professionals with direct access the registry data base. Such systems would dispense with individualized review of transfer documents by land registry personnel. Developments to date with direct electronic registering and releasing mortgage liens by notaries in France suggest that a highly trained, cohesive cadre of conveyancing professionals can make such a system work. Whether a larger group of lawyers from general practice or real estate brokers can be entrusted with unmediated access to the public land registry data bank is a question with which land registry officials in both England and Sweden are currently struggling.

Conclusions

Based on the information obtained and reviewed, the following conclusions are submitted:

- Comparison of the costs or efficiency of conveyancing professionals in effectuating the conveyance of residential real estate is complicated by differing requirements of national and local law, taxation and real estate regulation, local real estate market conditions, national and local real estate title registration systems, national substantive real property law and the requirements of local banks, all of which

impact the conveyancing function and the work to be performed by conveyancing professionals.

- Table C attached represents a detailed current estimate of potential costs for conveyancing services along with certain other transaction costs for eight hypothetical purchases and sales of residential real estate with or without mortgage.
- In all the countries studied, fees and costs of conveyancing professionals represent a tiny portion of the value of most real estate transactions, generally of the order of less than 1%
- The average value of real estate transactions in the EU jurisdictions studied has been reported to range between 130,000 € in Germany up to 297,000 € in England. Higher value residential real estate transactions (500,000 -1,000,000 €) are relatively small in number compared with transactions of low and average value.
- Conveyancing costs in notarial jurisdictions appear to be relatively low for residential real estate transactions of average value. Conveyancing costs in common-law jurisdictions (United Kingdom and the U.S.) are higher for low and average value transactions, but somewhat lower for the transactions of higher value.
- Conveyancing costs in Sweden are hard to isolate. It appears that brokers' roles as conveyancers enable them to charge brokerage commissions in transactions in which brokerage services are not needed and that conveyancing costs for low and average value transactions are not in fact lower than in the other jurisdictions under study.
- In Estonia, France and Germany parties are assured of high quality impartial legal advice and transaction execution by public notaries. Sellers and buyers in the United Kingdom have access to advice from solicitors, who in some cases also represent financing banks. Sellers and buyers in the United States may hire their own lawyers, but frequently rely on lawyers or title companies representing financing banks. Parties to Swedish transactions are generally not advised by lawyers, but by the sellers' real estate brokers with attendant conflict-of-interest issues.
- Real estate conveyancing in Estonia, France and Germany is facilitated by modern land registry systems which are in the process of converting to all electronic access and transaction effectuation. England is also modernizing its land registry systems, but is struggling with a high rate of errors in registry submittals. Sweden is in a similar situation. The states of the United States lag badly in implementing modern title registry systems, which leads to excess costs for title insurance.
- European title registration systems depend on title registry officials to screen conveyancing documents for errors and deficiencies. As land registration systems

consider giving conveyancers direct access to registry data bases, it will be necessary for conveyancers to exercise strong quality control to maintain the integrity of public registers. Estonia, France and Germany, with compact groups of highly competent, impartial and publicly accountable notaries, appear to be ready to maintain quality control in the all-electronic age.

- There is no evidence that deregulation of conveyancing services leads to lower cost or higher efficiency among the countries under consideration. The contrary appears to be true. In the most highly regulated jurisdictions such as Estonia and Germany, average costs are low (particularly for the numerous market-relevant transactions of low and average value), the registry systems function effectively and consumer satisfaction appears to be high. On the other hand England, with less regulation, has high costs for the many smaller transactions, a high rate of failure of transactions (30%) and a low level of reported consumer satisfaction. In Sweden the real estate brokers are able to garner sales commissions in many transactions where brokerage is not needed. Questions about the impartiality and quality of legal advice to participants can also be raised in Sweden. In the U. S. partial deregulation of conveyancing has permitted banks to distort the system to benefit them and their lawyers at the expense of consumers.
- The market for real estate conveyancing services is far from a perfect market. Groups such as banks, lawyers and brokers are able to influence costs and practices based on their strategic positions in the marketplace. Enlightened regulation appears to be doing a better job at cost minimization and consumer protection than the “free” market.
- There is little reason to foster standardization of real estate conveyancing regulation, practices or costs within the EU. A degree of diversity in real estate practices within the EU can lead to improvement of standards generally, as different Member States can observe and learn from each other.
- The model of a single neutral professional to attend to legal aspects of real estate transactions appears to offer strong advantages in terms of cost efficiency and systemic integrity over models of collaborating party-retained conveyancers or fully deregulated models. All models require some regulation. The effectiveness of the model will depend in large part on the quality of the regulation.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Peter L. Murray". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

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TABLE C – COSTS FOR REAL ESTATE TRANSFERS IN 5 EUROPEAN MEMBER STATES AND 2 STATES OF THE UNITED STATES

| | | Sale of Land for 100,000 | Sale of Land for 100,000 with new mortgage for 75,000 | Sale of House for 250,000 | Sale of House for 250,000 with new mortgage for 150,000 | Sale of House for 500,000 | Sale of House for 500,000 with new mortgage for 400,000 | Sale of House for 1,000,000 | Sale of house for 1,000,000 with new mortgage for 750,000 | |
|--|--|---|---|---------------------------|---|---------------------------|---|-----------------------------|---|------------|
| Estonia | Costs | Broker's Commission | 4,000€ | 4,000€ | 10,000€ | 10,000€ | 20,000€ | 20,000€ | 40,000€ | 40,000€ |
| | | Purchase Price | 100,000€ | 100,000€ | 250,000€ | 250,000€ | 500,000€ | 500,000€ | 1,000,000€ | 1,000,000€ |
| | | Mortgage Amount | -€ | 74,996€ | -€ | 187,511€ | -€ | 400,000€ | -€ | 750,000€ |
| | | Notary Fee - Contract | 379€ | -€ | 922€ | -€ | 1,827€ | -€ | 3,620€ | -€ |
| | | Notary Fee Combined Contract & Mortgage | -€ | 446€ | -€ | 967€ | -€ | 2,143€ | -€ | 4,170€ |
| | | Recording/Registration Fee | 110€ | 136€ | 294€ | 304€ | 754€ | 909€ | 1,600€ | 1,977€ |
| | Total Transfer Costs | 4,488€ | 4,582€ | 11,215€ | 11,271€ | 22,581€ | 23,052€ | 45,220€ | 46,147€ | |
| | Total Conveyancing Fees | 379€ | 446€ | 922€ | 967€ | 1,827€ | 2,143€ | 3,620€ | 4,170€ | |
| | Convenancing Fees as percent of Total Costs | 8.43% | 9.74% | 8.22% | 8.58% | 8.09% | 9.30% | 8.01% | 9.04% | |
| | Conveyancing Fees as percent of Purchase Price | 0.38% | 0.45% | 0.37% | 0.39% | 0.37% | 0.43% | 0.36% | 0.42% | |
| | Broker's Commission as percent of Total Cost | 89.12% | 87.29% | 89.16% | 88.72% | 88.57% | 86.76% | 88.46% | 86.68% | |
| France | Costs | Broker's Commission | 6,000€ | 6,000€ | 15,000€ | 15,000€ | 30,000€ | 30,000€ | 60,000€ | 60,000€ |
| | | Purchase Price | 100,000€ | 100,000€ | 250,000€ | 250,000€ | 500,000€ | 500,000€ | 1,000,000€ | 1,000,000€ |
| | | Notary Fee - Contract | 1,154€ | 1,154€ | 2,391€ | 2,391€ | 4,454€ | 4,454€ | 8,579€ | 8,579€ |
| | | Notary Fee - Mortgage | -€ | 316€ | -€ | 522€ | -€ | 1,210€ | -€ | 2,172€ |
| | | Notary's Overheads Charge | 200€ | 200€ | 300€ | 300€ | 300€ | 300€ | 300€ | 300€ |
| | | Real Estate Transfer Tax | 5,090€ | 5,090€ | 12,725€ | 12,725€ | 25,450€ | 25,450€ | 50,900€ | 50,900€ |
| | | Recording/Registration Fee | 100€ | 100€ | 250€ | 250€ | 500€ | 500€ | 1,000€ | 1,000€ |
| | | Mortgage Registration Fee | -€ | 45€ | -€ | 90€ | -€ | 240€ | -€ | 450€ |
| | Total Transfer Costs | 12,544€ | 12,905€ | 30,666€ | 31,278€ | 60,704€ | 62,154€ | 120,779€ | 123,401€ | |
| | Total Conveyancing Fees | 1,354€ | 1,670€ | 2,691€ | 3,213€ | 4,754€ | 5,964€ | 8,879€ | 11,051€ | |
| | Convenancing Fees as percent of Total Costs | 10.79% | 12.94% | 8.78% | 10.27% | 7.83% | 9.60% | 7.35% | 8.96% | |
| Conveyancing Fees as percent of Purchase Price | 1.35% | 1.67% | 1.08% | 1.29% | 0.95% | 1.19% | 0.89% | 1.11% | | |
| Broker's Commission as percent of Total Cost | 47.83% | 46.49% | 48.91% | 47.96% | 49.42% | 48.27% | 49.68% | 48.62% | | |
| Germany | Costs | Broker's Commission | 4,000€ | 4,000€ | 10,000€ | 10,000€ | 20,000€ | 20,000€ | 40,000€ | 40,000€ |
| | | Purchase Price | 100,000€ | 100,000€ | 250,000€ | 250,000€ | 500,000€ | 500,000€ | 1,000,000€ | 1,000,000€ |
| | | Notary Fee - Contract | 454€ | 454€ | 904€ | 904€ | 1,654€ | 1,654€ | 3,154€ | 3,154€ |
| | | Notary Fee Contract Effectuation | 105€ | 105€ | 205€ | 205€ | 333€ | 333€ | 588€ | 588€ |
| | | Notary Fee - Mortgage | -€ | 187€ | -€ | 292€ | -€ | 667€ | -€ | 1,192€ |
| | | Real Estate Transfer Tax | 3,500€ | 3,500€ | 8,750€ | 8,750€ | 17,500€ | 17,500€ | 35,000€ | 35,000€ |

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|--|--------|--|----------|----------|----------|----------|----------|----------|------------|------------|
| | | Recording/Registration Fee | 311€ | 311€ | 648€ | 648€ | 1,211€ | 1,211€ | 2,336€ | 2,336€ |
| | | Mortgage Registration Fee | -€ | 177€ | -€ | 282€ | -€ | 657€ | -€ | 1,182€ |
| | | Total Transfer Costs | 8,370€ | 8,734€ | 20,507€ | 21,081€ | 40,698€ | 42,022€ | 81,078€ | 83,452€ |
| | | Total Conveyancing Fees | 559€ | 746€ | 1,109€ | 1,401€ | 1,987€ | 2,654€ | 3,742€ | 4,934€ |
| | | Convenancing Fees as percent of Total Costs | 6.68% | 8.54% | 5.41% | 6.65% | 4.88% | 6.32% | 4.62% | 5.91% |
| | | Conveyancing Fees as percent of Purchase Price | 0.56% | 0.75% | 0.44% | 0.56% | 0.40% | 0.53% | 0.37% | 0.49% |
| | | Broker's Commission as percent of Total Cost | 47.79% | 45.80% | 48.76% | 47.44% | 49.14% | 47.59% | 49.34% | 47.93% |
| Sweden | Costs | Broker's Commission | 3,000€ | 3,000€ | 7,500€ | 7,500€ | 15,000€ | 15,000€ | 30,000€ | 30,000€ |
| | | Purchase Price | 100,000€ | 100,000€ | 250,000€ | 250,000€ | 500,000€ | 500,000€ | 1,000,000€ | 1,000,000€ |
| | | Mortgage Amount | -€ | 75,000€ | -€ | 150,000€ | -€ | 400,000€ | -€ | 750,000€ |
| | | Inspection/Engineer Fee | 500€ | 500€ | 500€ | 500€ | 500€ | 500€ | 500€ | 500€ |
| | | Real Estate Transfer Tax | 1,500€ | 1,500€ | 3,750€ | 3,750€ | 7,500€ | 7,500€ | 15,000€ | 15,000€ |
| | | Recording/Registration Fee | 89€ | 89€ | 89€ | 89€ | 89€ | 89€ | 89€ | 89€ |
| | | Mortgage Registration Fee | -€ | 41€ | -€ | 41€ | -€ | 41€ | -€ | 41€ |
| | | Broker Contract and Implementation Charge | 900€ | 900€ | 2,250€ | 2,250€ | 4,500€ | 4,500€ | 9,000€ | 9,000€ |
| | | Total Transfer Costs | 5,989€ | 6,030€ | 14,089€ | 14,130€ | 27,589€ | 27,630€ | 54,589€ | 54,630€ |
| | | Total Conveyancing Fees | 900€ | 900€ | 2,250€ | 2,250€ | 4,500€ | 4,500€ | 9,000€ | 9,000€ |
| | | Convenancing Fees as percent of Total Costs | 15.03% | 14.93% | 15.97% | 15.92% | 16.31% | 16.29% | 16.49% | 16.47% |
| | | Conveyancing Fees as percent of Purchase Price | 0.90% | 0.90% | 0.90% | 0.90% | 0.90% | 0.90% | 0.90% | 0.90% |
| Broker's Commission as percent of Total Cost | 50.09% | 49.75% | 53.23% | 53.08% | 54.37% | 54.29% | 54.96% | 54.92% | | |
| United Kingdom | Costs | Broker's Commission | 2,000€ | 2,000€ | 5,000€ | 5,000€ | 10,000€ | 10,000€ | 20,000€ | 20,000€ |
| | | Purchase Price | 100,000€ | 100,000€ | 250,000€ | 250,000€ | 500,000€ | 500,000€ | 1,000,000€ | 1,000,000€ |
| | | Searches Fees | 304€ | 304€ | 304€ | 304€ | 304€ | 304€ | 304€ | 304€ |
| | | Buyer's Lawyer's Fee | 608€ | 608€ | 676€ | 676€ | 815€ | 815€ | 1,183€ | 1,183€ |
| | | Seller's Lawyer's Fee | 571€ | 571€ | 635€ | 635€ | 768€ | 768€ | 1,116€ | 1,116€ |
| | | Bank Lawyer's Fee | -€ | 100€ | -€ | 250€ | -€ | 499€ | -€ | 999€ |
| | | Inspection/Engineer Fee | 441€ | 441€ | 514€ | 514€ | 705€ | 705€ | 1,102€ | 1,102€ |
| | | Real Estate Transfer Tax | -€ | -€ | 2,499€ | 2,499€ | 15,000€ | 15,000€ | 39,999€ | 39,999€ |
| | | Recording/Registration Fee | 88€ | 88€ | 220€ | 220€ | 323€ | 323€ | 617€ | 617€ |
| | | Total Transfer Costs | 4,013€ | 4,112€ | 9,848€ | 10,097€ | 27,916€ | 28,415€ | 64,321€ | 65,320€ |
| | | Total Conveyancing Fees | 1,484€ | 1,584€ | 1,614€ | 1,864€ | 1,888€ | 2,387€ | 2,603€ | 3,602€ |
| | | Convenancing Fees as percent of Total Costs | 36.98% | 38.51% | 16.39% | 18.46% | 6.76% | 8.40% | 4.05% | 5.51% |
| Conveyancing Fees as percent of Purchase Price | 1.48% | 1.58% | 0.65% | 0.75% | 0.38% | 0.48% | 0.26% | 0.36% | | |
| Broker's Commission as percent of Total Cost | 49.84% | 48.63% | 50.77% | 49.52% | 35.82% | 35.19% | 31.09% | 30.62% | | |
| U. S. - Maine | Costs | Broker's Commission | 6,000€ | 6,000€ | 15,000€ | 15,000€ | 30,000€ | 30,000€ | 60,000€ | 60,000€ |
| | | Purchase Price | 100,000€ | 100,000€ | 250,000€ | 250,000€ | 500,000€ | 500,000€ | 1,000,000€ | 1,000,000€ |
| | | Title Examination Fee | 228€ | 228€ | 228€ | 228€ | 228€ | 228€ | 228€ | 228€ |
| | | Buyer's Lawyer's Fee | 148€ | -€ | 148€ | -€ | 148€ | -€ | 148€ | -€ |
| | | Seller's Lawyer's Fee | 103€ | 103€ | 103€ | 103€ | 103€ | 103€ | 103€ | 103€ |
| | | Bank Lawyer's Fee | -€ | 148€ | -€ | 148€ | -€ | 148€ | -€ | 148€ |

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|-------------------------|--------------|---|----------|---|----------|----------|----------|----------|------------|------------|---------|---------|
| | | <i>Appraisal Fee</i> | -€ | 266€ | -€ | 266€ | -€ | 266€ | -€ | 266€ | | |
| | | <i>Inspection/Engineer Fee</i> | -€ | 152€ | -€ | 152€ | -€ | 171€ | -€ | 171€ | | |
| | | <i>Real Estate Transfer Tax</i> | 335€ | 335€ | 837€ | 837€ | 1,674€ | 1,674€ | 3,348€ | 3,348€ | | |
| | | <i>Owners Title Insurance</i> | 228€ | 304€ | 628€ | 704€ | 1,256€ | 1,332€ | 2,511€ | 2,587€ | | |
| | | <i>Title Company Fee</i> | 152€ | 152€ | 152€ | 152€ | 152€ | 152€ | 152€ | 152€ | | |
| | | <i>Recording/Registration Fee</i> | 14€ | 14€ | 15€ | 15€ | 15€ | 15€ | 15€ | 15€ | | |
| | | <i>Mortgage Registration Fee</i> | -€ | 44€ | -€ | 44€ | -€ | 44€ | -€ | 44€ | | |
| | | <i>Total Transfer Costs</i> | 7,208€ | 7,747€ | 17,112€ | 17,651€ | 33,577€ | 34,135€ | 66,507€ | 67,064€ | | |
| | | <i>Total Conveyancing Fees</i> | 860€ | 936€ | 1,259€ | 1,336€ | 1,887€ | 1,963€ | 3,143€ | 3,219€ | | |
| | | <i>Convenancing Fees as percent of Total Costs</i> | 11.93% | 12.08% | 7.36% | 7.57% | 5.62% | 5.75% | 4.73% | 4.80% | | |
| | | <i>Conveyancing Fees as percent of Purchase Price</i> | 0.86% | 0.94% | 0.50% | 0.53% | 0.38% | 0.39% | 0.31% | 0.32% | | |
| | | <i>Broker's Commission as percent of Total Cost</i> | 83.24% | 77.45% | 87.66% | 84.98% | 89.35% | 87.89% | 90.22% | 89.47% | | |
| <i>U. S. - New York</i> | <i>Costs</i> | <i>Broker's Commission</i> | 6,000€ | 6,000€ | 15,000€ | 15,000€ | 30,000€ | 30,000€ | 60,000€ | 60,000€ | | |
| | | <i>Purchase Price</i> | 100,000€ | 100,000€ | 250,000€ | 250,000€ | 500,000€ | 500,000€ | 1,000,000€ | 1,000,000€ | | |
| | | <i>Buyer's Lawyer's Fee</i> | 342€ | 342€ | 342€ | 342€ | 342€ | 342€ | 342€ | 342€ | 342€ | |
| | | <i>Seller's Lawyer's Fee</i> | 419€ | 419€ | 419€ | 419€ | 419€ | 419€ | 419€ | 419€ | 419€ | |
| | | <i>Bank Lawyer's Fee</i> | -€ | 304€ | -€ | 304€ | -€ | 304€ | -€ | 304€ | -€ | |
| | | <i>Appraisal Fee</i> | 190€ | 190€ | 228€ | 228€ | 228€ | 228€ | 266€ | 266€ | 266€ | |
| | | <i>Real Estate Transfer Tax</i> | 304€ | 304€ | 761€ | 761€ | 1,522€ | 1,522€ | 3,044€ | 3,044€ | 3,044€ | |
| | | <i>Owners Title Insurance</i> | 467€ | 467€ | 853€ | 853€ | 1,496€ | 1,496€ | 2,649€ | 2,649€ | 2,649€ | |
| | | <i>Mortgagee Title Insurance</i> | -€ | 114€ | -€ | 176€ | -€ | 365€ | -€ | 365€ | -€ | |
| | | <i>Recording/Registration Fee</i> | 27€ | 27€ | 27€ | 27€ | 27€ | 27€ | 27€ | 27€ | 27€ | |
| | | <i>Mortgage Registration Fee</i> | -€ | 64€ | -€ | 64€ | -€ | 64€ | -€ | 64€ | -€ | |
| | | | | <i>Total Transfer Costs</i> | 7,750€ | 8,233€ | 17,631€ | 18,175€ | 34,035€ | 34,768€ | 66,748€ | 66,812€ |
| | | | | <i>Total Conveyancing Fees</i> | 1,228€ | 1,647€ | 1,614€ | 2,094€ | 2,257€ | 2,926€ | 3,410€ | 3,410€ |
| | | | | <i>Convenancing Fees as percent of Total Costs</i> | 15.85% | 20.00% | 9.15% | 11.52% | 6.63% | 8.42% | 5.11% | 5.10% |
| | | | | <i>Conveyancing Fees as percent of Purchase Price</i> | 1.23% | 1.65% | 0.65% | 0.84% | 0.45% | 0.59% | 0.34% | 0.34% |
| | | <i>Broker's Commission as percent of Total Cost</i> | 77.42% | 72.88% | 85.08% | 82.53% | 88.15% | 86.29% | 89.89% | 89.80% | | |